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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. _____, Original

STATE OF ARKANSAS,
Complainant,

v.

STATE OF TEXAS AND JOHN BEN SHEPPERD,
Attorney General of Texas,
Defendants.

RETURN OF DEFENDANTS TO RULE TO SHOW CAUSE

JOHN BEN SHEPPERD
Attorney General of the
State of Texas

WILLIAM H. HOLLOWAY

MARIETTA McGREGOR CREEL
Assistant Attorneys General

Attorneys for Defendants.

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RETURN OF DEFENDANTS TO RULE TO SHOW CAUSE

In response to the rule to show cause why leave to file the complaint tendered herein should not be granted, the defendants say:

I.

The William Buchanan Foundation, a private corporation organized and existing under the laws of the State of Texas, having its domicile and principle place of business in Bowie County, Texas, is an indispensable party to this suit.

On the 9th day of October, 1923, William Buchanan, a resident of Texarkana, Bowie County, Texas, executed a trust instrument creating "The William Buchanan Foundation," a charitable trust. This charitable enterprise was to be administered in Bowie County, Texas, in accordance with the provisions of said trust instrument. A copy of this instrument is attached to Complainant's Motion for Leave To File Complaint as "Exhibit A" at p. 17. Pursuant to the provisions of said trust instrument, The William Buchanan Foundation was duly incorporated under the laws of the State of Texas.

A determination of the validity of the contract between The William Buchanan Foundation and the University of Arkansas, necessitates an interpretation of the trust instrument and a determination of the trustees' power to enter into said contract.

II.

This Court should not entertain this suit unless The William Buchanan Foundation is made a Party hereto.

III.

Under established rules for proper alignment of parties, The William Buchanan Foundation, if a party to this suit, would be aligned as co-complainant.

The Trustees of The William Buchanan Foundation have taken the position in the suit filed in the 102nd District Court of Bowie County, Texas, by

the Attorney General of the State of Texas against the Foundation that the primary beneficiaries of the charitable trust created by William Buchanan are not limited to the residents of Bowie County, Texas, and of counties adjoining Bowie County, Texas, but that they may be determined at said trustees' discretion to the exclusion of the residents of Bowie and adjoining counties. (A copy of Defendant's Original Answer filed in said suit is attached hereto and incorporated herein as "Exhibit A".) Likewise in that suit they contend that the charitable institutions, agencies, means and activities authorized by the trust instrument need not be established, maintained, pursued and carried out in Bowie County, Texas, but may be established, maintained, administered, pursued and carried out in any portion of the United States or of the world.

Defendants herein, the State of Texas and John Ben Shepperd, Attorney General of the State of Texas, are convinced and have alleged in their first amended original petition filed in the 102nd District Court of Bowie County, Texas, (see Complainant's Motion for Leave To File Complaint, p. 52) that the trust instrument executed by William Buchanan is plain in its direction that the primary beneficiaries of the trust are the residents of Bowie County, Texas, and of counties adjoining Bowie County, Texas, and that the charitable institutions, agencies, means and activities contemplated by said instrument be established, maintained, administered, pursued and carried out in Bowie County, Texas.

Thus, the position of The William Buchanan Foundation is the same as that taken by the State

of Arkansas. Therefore, if a party to this suit, the Foundation should be aligned as co-complainant.

IV.

Absent the consent of the State of Texas, The William Buchanan Foundation cannot be made a co-complainant in this suit.

V.

The William Buchanan Foundation cannot be made a co-complainant in this suit because jurisdiction is dependent upon the State of Arkansas being the moving party.

VI.

The William Buchanan Foundation cannot be joined as a party defendant in this suit because:

A. The William Buchanan Foundation is an indispensable party plaintiff or co-complainant.

B. Joinder of The William Buchanan Foundation as a party defendant would oust this Court of Jurisdiction.

VII.

Even if The William Buchanan Foundation could properly be joined as a party defendant, this Court should decline to exercise jurisdiction as a matter of sound equitable discretion because:

A. This Court's original jurisdiction of controversies between a State on the one side and

another State and a citizen of that State on the other is not mandatory.

B. Considerations of convenience, efficiency and justice point to the 102nd District Court of Bowie County, Texas.

C. The principle of comity which obtains between courts of concurrent jurisdiction forbids interference by this Court with the suit which is pending in the 102nd District Court of Bowie County, Texas.

WHEREFORE, the defendants having shown cause, ask that the Rule be discharged and that leave to file the complaint be denied.

Respectfully Submitted,

JOHN BEN SHEPPERD
Attorney General of the
State of Texas

WILLIAM H. HOLLOWAY

MARIETTA McGREGOR CREEL
Assistant Attorneys General

Attorneys for Defendants.

STATE OF TEXAS
COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared William H. Holloway and Marietta McGregor Creel, Assistant Attorneys General of the State of Texas, who being duly sworn, depose and say: That they have read the foregoing Return of Defendants to Rule to Show Cause, that

they know the Contents thereof, and that the statements of fact contained therein are true and correct.

WILLIAM H. HOLLOWAY

MARIETTA McGREGOR CREEL

Subscribed and sworn to before me this_____ day of June, 1953.

Notary Public in and for
Travis County, Texas

My commission expires:

"EXHIBIT A"

No. 010437-A

IN THE 102ND DISTRICT COURT
OF BOWIE COUNTY, TEXAS

THE STATE OF TEXAS

vs.

THE WILLIAM BUCHANAN FOUNDATION,
A PRIVATE CORPORATION, ET AL.

ORIGINAL ANSWER OF THE DEFENDANT
WILLIAM BUCHANAN FOUNDATION

TO SAID HONORABLE COURT:

William Buchanan Foundation, a private corporation, answers the Plaintiff's Original Petition filed herein as follows:

I.

Said petition shows on its face that the plaintiff has failed to join an indispensable party, to wit, the University of Arkansas. It affirmatively appears

that the defendants have agreed to contribute Five Hundred Thousand Dollars ($500,000.00) to the University of Arkansas, to be used for the construction of a floor in the new teaching hospital being built in Little Rock, Arkansas. The petition tenders the issue that the beneficiaries of the trust are limited to residents of Bowie County, Texas, and of adjoining counties and that the trustees have no authority to commit any of the trust funds outside of the territorial limits indicated; and plaintiff seeks an injunction to restrain this defendant and its trustees and agents from expending any further sums of money for the construction, furnishing or maintenance of buildings or institutions outside of Bowie County. The necessary effect of the relief sought and prayed for will be to annul the gifts to the University of Arkansas and this is to be done without even the joinder of the University of Arkansas, which cannot be done. This defendant prays in this connection that the suit be dismissed for failure to join the University of Arkansas or that the plaintiff be required to join the University of Arkansas.

II.

This defendant denies all and singular the allegations contained in plaintiff's said petition and demands strict proof of the same, and of this puts itself upon the country.

Having fully answered herein, this defendant prays that the suit against it be dismissed for failure to join a necessary party and, in the alternative,

that upon trial hereof all the relief prayed for be denied, and for general relief.

(Signed) CHARLES L. BLACK
Attorney for Defendant
The William Buchanan
Foundation